

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JANET GRISHAM

Claimant

VS.

ST. FRANCIS REGIONAL MEDICAL CENTER

Respondent

Self-Insured

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Docket No. 201,174

ORDER

Claimant appeals from the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated July 21, 1995 that denied claimant's request for compensation benefits.

ISSUES

Claimant requests Appeals Board review of the following issues:

- (1) Whether claimant suffered a personal injury by accident that arose out of and in the course of her employment with the respondent; and
- (2) Whether claimant gave timely notice of the accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary record and considering claimant's brief, the Appeals Board finds as follows:

The issues raised by the claimant are jurisdictional issues subject to Appeals Board review. See K.S.A. 44-534a(a)(2).

- (1) Claimant alleged that during the period from 1991 through her last day worked for the respondent of March 10, 1995, she suffered a series of accidents that caused injuries to her back and right wrist. Claimant started working for the respondent on January 15, 1990 as a patient care assistant. Her primary job function was transporting patients to and from their hospital room to surgery. She had to lift patients from their bed to a cart or wheelchair and return them, after surgery, to their hospital bed.

On February 21, 1991, claimant injured her low back while pushing a cart with a patient to surgery. She notified respondent who referred her to Paul D. Lesko, M.D., an orthopedic surgeon. Dr. Lesko took her off work, prescribed medication and physical therapy. Dr. Lesko diagnosed low back strain and returned claimant to her regular work without restrictions on March 13, 1991. Claimant then worked until February 11, 1992, when she again reported a work-related back injury to the respondent and was seen at respondent's Employee Health Center. Claimant was taken off work until February 14, 1992 when she was returned to her regular job. Claimant testified that she did not request respondent to provide further medical treatment for her alleged back injury from February 14, 1992 to her last day worked of March 10, 1995. She also did not complain or report a work-related right wrist injury while she was employed by the respondent. When the claimant gave written notice that she was resigning her position with the respondent, she indicated she was resigning to start a day care center. At the time claimant terminated, she did not notify the respondent that she suffered work-related injuries. The medical records establish that the first time claimant complained of pain in her right wrist was in a medical note of Stan A. Messner, M.D., claimant's personal physician, dated June 22, 1995. Dr. Messner's medical record indicated that claimant complained of pain in her right wrist and that the problem may have started at work. In regard to claimant's alleged back problem, claimant finally makes a complaint on March 8, 1995 to Dr. Messner concerning tenderness in the muscles of her thighs. The medical record does not directly relate this symptomatology to her back or work activities.

Claimant has the burden to prove by a preponderance of the credible evidence that it is more probably true than not that her alleged injuries are a result of her work activities. See K.S.A. 44-501(a) and K.S.A. 44-508(g). The claimant has failed to sustain that burden. Accordingly, the Appeals Board affirms the Administrative Law Judge's finding that the claimant has failed to establish that her work activities since her work-related back injuries in 1991 and 1992 have resulted in further injury to her back or that her current back complaints are a natural consequence of the 1991 and 1992 incidents. The Appeals Board also affirms the Administrative Law Judge's decision that the claimant's right wrist complaints are not work related.

(2) Having found that claimant did not sustain the back injury and a right wrist injury while employed by the respondent, the issue of timely notice of accident is moot and will not be addressed by the Appeals Board in this Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes, dated July 21, 1995 should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: David V. Jackson, Wichita, Kansas
Edward D. Heath, Jr., Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director